

HOUSE BILL 442

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5lr1784
CF SB 333

By: **Delegates Simpson, Acevero, Bouchat, Fair, Kerr, Miller, and Tomlinson**
Introduced and read first time: January 16, 2025
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Victims and Witnesses – Out of Court Statement of Child**
3 **to Forensic Interviewer**

4 FOR the purpose of expanding a certain evidentiary rule to render admissible an out of
5 court statement made by a child victim or witness to a certain forensic interviewer
6 subject to certain requirements; and generally relating to out of court statements by
7 child victims and witnesses.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Procedure
10 Section 11–304
11 Annotated Code of Maryland
12 (2018 Replacement Volume and 2024 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 That the Laws of Maryland read as follows:

15 **Article – Criminal Procedure**

16 11–304.

17 (a) **(1)** In this section[, “statement”] **THE FOLLOWING WORDS HAVE THE**
18 **MEANINGS INDICATED.**

19 **(2) “FORENSIC INTERVIEWER” MEANS A PROFESSIONAL WHO:**

20 **(I) IS TRAINED IN CHILD FORENSIC INTERVIEWING PROTOCOLS**
21 **AND TECHNIQUES THAT ALLOW FOR NEUTRAL, LEGALLY SOUND, NONLEADING, AND**
22 **DEVELOPMENTALLY APPROPRIATE INTERVIEWS WITH CHILDREN TO GATHER**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 INFORMATION WITHOUT INFLUENCING THE INFORMATION PROVIDED BY THE
2 CHILD;

3 (II) IS NOT A LAW ENFORCEMENT OFFICER; AND

4 (III) IS EMPLOYED BY OR WORKS UNDER CONTRACT WITH A
5 CHILD ADVOCACY CENTER AS DEFINED IN § 13-2201 OF THE HEALTH – GENERAL
6 ARTICLE, OR AN ENTITY IN ANOTHER JURISDICTION THAT WOULD QUALIFY AS A
7 CHILD ADVOCACY CENTER IN THE STATE.

8 (3) “STATEMENT” means:

9 [(1)] (I) an oral or written assertion; or

10 [(2)] (II) nonverbal conduct intended as an assertion, including sounds,
11 gestures, demonstrations, drawings, and similar actions.

12 (b) Subject to subsections (c), (d), and (e) of this section, the court may admit into
13 evidence in a juvenile court proceeding or in a criminal proceeding an out of court statement
14 to prove the truth of the matter asserted in the statement made by a child victim or witness
15 who:

16 (1) (i) is under the age of 13 years; and

17 (ii) is an alleged victim or a child alleged to need assistance in the
18 case before the court concerning:

19 1. child abuse under § 3-601 or § 3-602 of the Criminal Law
20 Article;

21 2. rape or sexual offense under §§ 3-303 through 3-307 of
22 the Criminal Law Article;

23 3. attempted rape in the first or second degree under §§
24 3-309 and 3-310 of the Criminal Law Article;

25 4. in a juvenile court proceeding, abuse or neglect as defined
26 in § 5-701 of the Family Law Article; or

27 5. neglect of a minor under § 3-602.1 of the Criminal Law
28 Article; or

29 (2) (i) is under the age of 13 years; and

30 (ii) is an alleged victim or a witness in a case before the court
31 concerning a crime of violence as defined under § 14-101 of the Criminal Law Article.

1 (c) An out of court statement may be admissible under this section only if the
2 statement was made to and is offered by a person acting lawfully in the course of the
3 person's profession when the statement was made who is:

4 (1) a physician;

5 (2) a psychologist;

6 (3) a nurse;

7 (4) a social worker;

8 (5) a principal, vice principal, teacher, or school counselor at a public or
9 private preschool, elementary school, or secondary school;

10 (6) a counselor licensed or certified in accordance with Title 17 of the
11 Health Occupations Article; [or]

12 (7) a therapist licensed or certified in accordance with Title 17 of the
13 Health Occupations Article; **OR**

14 **(8) A FORENSIC INTERVIEWER.**

15 (d) (1) Under this section, an out of court statement by a child victim or
16 witness may come into evidence in a criminal proceeding or in a juvenile court proceeding
17 other than a child in need of assistance proceeding under Title 3, Subtitle 8 of the Courts
18 Article to prove the truth of the matter asserted in the statement:

19 (i) if the statement is not admissible under any other hearsay
20 exception; and

21 (ii) if the child victim or witness testifies.

22 (2) (i) In a child in need of assistance proceeding in the juvenile court
23 under Title 3, Subtitle 8 of the Courts Article, an out of court statement by a child victim
24 may come into evidence to prove the truth of the matter asserted in the statement:

25 1. if the statement is not admissible under any other hearsay
26 exception; and

27 2. regardless of whether the child victim testifies.

28 (ii) If the child victim does not testify, the child victim's out of court
29 statement will be admissible only if there is corroborative evidence that the alleged offender
30 had the opportunity to commit the alleged abuse or neglect.

1 (3) To provide the defendant, child respondent, or alleged offender with an
2 opportunity to prepare a response to the statement, the prosecuting attorney shall serve on
3 the defendant, child respondent, or alleged offender and the attorney for the defendant,
4 child respondent, or alleged offender within a reasonable time before the juvenile court
5 proceeding and at least 20 days before the criminal proceeding in which the statement is to
6 be offered into evidence, notice of:

7 (i) the State's intention to introduce the statement;

8 (ii) any audio or visual recording of the statement; and

9 (iii) if an audio or visual recording of the statement is not available,
10 the content of the statement.

11 (4) (i) The defendant, child respondent, or alleged offender may depose
12 a witness who will testify under this section.

13 (ii) Unless the State and the defendant, child respondent, or alleged
14 offender agree or the court orders otherwise, the defendant, child respondent, or alleged
15 offender shall file a notice of deposition:

16 1. in a criminal proceeding, at least 5 days before the date of
17 the deposition; or

18 2. in a juvenile court proceeding, within a reasonable time
19 before the date of the deposition.

20 (iii) Except where inconsistent with this paragraph, Maryland Rule
21 4-261 applies to a deposition taken under this paragraph.

22 (e) (1) A child victim's or witness's out of court statement is admissible under
23 this section only if the statement has particularized guarantees of trustworthiness.

24 (2) To determine whether the statement has particularized guarantees of
25 trustworthiness under this section, the court shall consider, but is not limited to, the
26 following factors:

27 (i) the child victim's or witness's personal knowledge of the event;

28 (ii) the certainty that the statement was made;

29 (iii) any apparent motive to fabricate or exhibit partiality by the child
30 victim or witness, including interest, bias, corruption, or coercion;

31 (iv) whether the statement was spontaneous or directly responsive to
32 questions;

1 (v) the timing of the statement;

2 (vi) whether the child victim's or witness's young age makes it
3 unlikely that the child victim or witness fabricated the statement that represents a graphic,
4 detailed account beyond the child victim's or witness's expected knowledge and experience;

5 (vii) the appropriateness of the terminology of the statement to the
6 child victim's or witness's age;

7 (viii) the nature and duration of the abuse or neglect;

8 (ix) the inner consistency and coherence of the statement;

9 (x) whether the child victim or witness was suffering pain or distress
10 when making the statement;

11 (xi) whether extrinsic evidence exists to show the defendant or child
12 respondent had an opportunity to commit the act complained of in the child victim's or
13 witness's statement;

14 (xii) whether the statement was suggested by the use of leading
15 questions; and

16 (xiii) the credibility of the person testifying about the statement.

17 (f) In a hearing outside of the presence of the jury or before the juvenile court
18 proceeding, the court shall:

19 (1) make a finding on the record as to the specific guarantees of
20 trustworthiness that are in the statement; and

21 (2) determine the admissibility of the statement.

22 (g) (1) In making a determination under subsection (f) of this section, the court
23 shall examine the child victim or witness in a proceeding in the judge's chambers, the
24 courtroom, or another suitable location that the public may not attend unless:

25 (i) the child victim or witness:

26 1. is deceased; or

27 2. is absent from the jurisdiction for good cause shown or the
28 State has been unable to procure the child victim's or witness's presence by subpoena or
29 other reasonable means; or

1 (ii) the court determines that an audio or visual recording of the
2 child victim's or witness's statement makes an examination of the child victim or witness
3 unnecessary.

4 (2) Except as provided in paragraph (3) of this subsection, any defendant
5 or child respondent, attorney for a defendant or child respondent, and the prosecuting
6 attorney may be present when the court hears testimony on whether to admit into evidence
7 the out of court statement of a child victim or witness under this section.

8 (3) When the court examines the child victim or witness as paragraph (1)
9 of this subsection requires:

10 (i) one attorney for each defendant or child respondent, one attorney
11 for the child victim or witness, and one prosecuting attorney may be present at the
12 examination; and

13 (ii) the court may not allow a defendant or child respondent to be
14 present at the examination.

15 (h) (1) This section does not limit the admissibility of a statement under any
16 other applicable hearsay exception or rule of evidence.

17 (2) This section does not prohibit the court in a juvenile court proceeding
18 from hearing testimony in the judge's chambers.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2025.